WILMERHALE

November 22, 2023

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Via Online Shareholder Proposal Form

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, NE
Washington, DC 20549

Re: The Walt Disney Company
Exclusion of Shareholder Proposal by the National Legal and Policy Center

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the "Company"), to inform you of the Company's intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2024 annual meeting of shareholders (the "Proxy Materials"), the enclosed shareholder proposal and supporting statement (collectively, the "Proposal") submitted by the National Legal and Policy Center (the "Proponent") requesting that the Board of Directors of the Company (the "Board") issue a report by December 31, 2024 about compensation and health benefit gaps.

The Company respectfully requests that the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on the basis that the Proposal relates to the Company's ordinary business operations.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), the Company is submitting electronically to the Commission this letter, and the Proposal (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent.

Background

On October 11, 2023, the Company received the Proposal from the Proponent. The Proposal states as follows:

> **WHEREAS:** Compensation and benefits inequities persist across employee gender categories, and pose substantial risk to companies and society at large.
>
> The United States Department of Labor states that "equal pay" is required if persons of different genders "perform equal work in the same workplace," and that "all forms of compensation are covered, meaning not only pay, but also benefits."[1] The U.S. Equal Employment Opportunity Commission adds:[2]
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>> *It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs.*
>
> **SUPPORTING STATEMENT:** The Walt Disney Company ("Company") provides health benefits to employees who suffer gender dysphoria/confusion, and who seek medical, chemical, and/or surgical treatments to aid their "transition" to their non-biological sex.[3] The Company boasts about its 100 percent score on the Human Rights Campaign's Corporate Equality Index and HRC's designation as a "Best Places to Work for LGBT Equality," noting the Company complies with CEI's "equitable benefits for LGBTQ+ workers and their families" requirement.[4]
>
> Company policy *affirms* it is possible for dysphoria sufferers to transition to a different sex. Yet an increasing body of scientific evidence shows no benefits result from such

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[1] https://www.employer.gov/EmploymentIssues/pay-and-benefits/Equal-pay/.
[2] https://www.eeoc.gov/prohibited-employment-policiespractices.
[3] https://nb.fidelity.com/public/consultingportal/disneyportal/file_view.php?file_name=2020_BenefitsSummary ChartOther.pdf.
[4] https://thewaltdisneycompany.com/disney-earns-top-score-in-hrc-foundation-corporate-equality-index/.

medical treatments.[5] In the United States and Europe, the medical community is increasingly cautious about transitioning therapies.[6] [7]

Victims report transition treatments and surgeries are harmful. Examples include long-lasting or permanent outcomes like chronic pain, sexual dysfunction, unwanted hair loss or hair gain, menstrual irregularities, urinary problems, and other complications.[8] Rather than resolve health problems, "gender affirming" therapies instead often exacerbate them.[9] In such instances, those who desire to "detransition" cannot find medical care or insurance coverage, and are permanently mutilated.[10] Many of these sufferers litigate against those who misled or harmed them.[11] [12]

HRC contemplates no accommodations for detransitioners or restorative health care for such individuals – instead, it denies there is need for such care.[13] Hence, the CEI-perfect Company appears to offer no such insurance coverage in its employee benefits - only for so-called "gender-affirming care," which includes a medical travel benefit.[14] Detransitioners are protected under "gender identity" and "sexual orientation" EEOC categories and therefore cannot be discriminated against.

RESOLVED: Shareholders request the board of directors issue a report by Dec. 31, 2024 about compensation and health benefit *gaps*, which should include how they address dysphoria and de-transitioning care across gender classifications, including associated reputational, competitive, operational and litigative risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary and private information, litigation strategy and legal compliance information.

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[5] https://www.foxnews.com/politics/crenshaw-grills-dem-witness-failure-name-one-study-citing-benefits-surgeries-trans-kids.
[6] https://www.wsj.com/articles/second-thoughts-on-gender-affirming-care-american-academy-pediatrics-doctors-review-medicine-a7173276
[7] https://www.wsj.com/articles/u-s-becomes-transgender-care-outlier-as-more-in-europe-urge-caution-6c70b5e0.
[8] https://www.dailymail.co.uk/health/article-11629421/Half-trans-surgery-patients-suffer-extreme-pain-sexual-issues-years-later.html.
[9] https://www.dailymail.co.uk/femail/article-12250695/I-trans-surgery-woman-19-four-yeas-later-Im-man.html
[10] https://thefederalist.com/2023/02/10/detransitioners-are-being-abandoned-by-medical-professionals-who-devastated-their-bodies-and-minds/
[11] https://public-substack.com/p/why-this-detransitioner-is-suing.
[12] https://www.dailymail.co.uk/news/article-12310887/Young-North-Carolina-woman-sues-doctors-testosterone-age-17-sayig-needed-therapy-not-double-mastectomy-latest-blockbuster-detransition-lawsuit.html
[13] https://www.hrc.org/resources/myths-and-facts-battling-disinformation-about-transgender-rights
[14] https://nb.fidelity.com/public/consultingportal/disneyportal/articles/109/disney-medical-travel-benefit

Basis for Exclusion

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because the subject matter of the Proposal directly concerns the Company's ordinary business operations.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal "deals with a matter relating to the company's ordinary business operations." The underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *See Amendments to Rules on Shareholder Proposals*, Release No. 34-40018 (May 21, 1998) (the "1998 Release"). An exception to this principle may be made where a proposal focuses on significant social policy issues that transcend the day-to-day business matters of the company. *See* 1998 Release. The Staff most recently discussed its interpretation of how it will consider whether a proposal "transcends the day-to-day business matters" of a company in Staff Legal Bulletin No. 14L (November 3, 2021) ("SLB 14L"), noting that it is "realign[ing]" its approach to determining whether a proposal relates to ordinary business with the standards the Commission initially articulated in 1976 and reaffirmed in the 1998 Release. Under this realignment, the Staff will "no longer take a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)" but rather will consider only "whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company."[15]

As set out in the 1998 Release, there are two "central considerations" underlying the ordinary business exclusion. One consideration is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The other consideration is that a proposal should not "seek[] to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." We believe the Proposal implicates both of these considerations.

Framing a shareholder proposal in the form of a request for a report does not change the underlying nature of the proposal. Instead, a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the proposed report is within the ordinary business of the company. *See* Exchange Act Release No. 20091 (August 16, 1983); *see also Rite Aid Corp.* (April 17, 2018) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the feasibility of adopting company-wide goals for increasing energy efficiency and use of renewable energy, in which the Staff determined that the proposal focused "primarily on matters relating to the [c]ompany's ordinary business operations"); and

[15] SLB 14L also explicitly rescinded prior Staff Legal Bulletin Nos. 14I, 14J and 14K, which set out a company-specific approach to the significant social policy issue analysis.

Netflix, Inc. (March 14, 2016) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal that requested a report relating to the company's assessment and screening of "inaccurate portrayals of Native Americans, American Indians and other indigenous peoples," in which the Staff determined that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

Additionally, in Staff Legal Bulletin No. 14E (October 27, 2009) ("SLB 14E"), the Staff has stated that its analysis of proposals requesting the company engage in an evaluation of risk mirrors its analysis of proposals requesting the company disseminate a report – both may be excludable under Rule 14a-8(i)(7) if the underlying subject matter concerns the ordinary business operations of the company. *See also McDonald's Corp.* (March 22, 2019) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal asking the company to "disclose the economic risks" it faced from "campaigns targeting the [c]ompany over concerns about cruelty to chickens" because it "focuses primarily on matters relating to the [c]ompany's ordinary business operations").

The Proposal may be excluded because it relates to general employee compensation and benefit matters.

The Proposal may be excluded in reliance on Rule 14a-8(i)(7) because the matters to be addressed in the requested report and risk evaluation – namely, the Company's compensation and health benefit plans and certain "gaps" in coverage – relate to the Company's ordinary business operations. As a large, global company with over 225,000 employees, of which approximately 167,000 are employed in the U.S., the Company's decisions regarding the amount and type of benefits it provides to its diverse workforce require complex and extensive analysis that is best suited for management. The analysis that would be necessitated by the Proposal is exactly the type of analysis that Rule 14a-8(i)(7) recognizes as a proper function of management, who have the requisite understanding of the Company's workforce, human capital management strategy, and compensation objectives to assess the appropriate employee benefits and associated risks thereof.

In *United Technologies Corp.* (February 19, 1993), the Staff provided the following examples of topics that involve a company's ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): "*employee health benefits, general compensation issues not focused on senior executives,* management of the workplace, employee supervision, labor-management relations, employee hiring and firing, conditions of the employment and employee training and motivation" (emphasis added). Since then, the Staff has consistently and repeatedly concurred in exclusion under Rule 14a-8(i)(7) of shareholder proposals that relate to various employee benefits. For example, in *Dollar Tree, Inc.* (May 2, 2022), the Staff concurred in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "analyze and report on risks to its business strategy in the face of increasing labor market pressure," including "how the

[c]ompany's . . . incentives will enable competitive employment standards, including wages, benefits, and employee safety," as relating to ordinary business matters. *See also McDonald's Corp.* (February 19, 2021) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the "feasibility of extending the paid sick leave policy adopted in response to COVID19 . . . as a standard employee benefit" as relating to ordinary business matters); *Walmart Inc.* (April 8, 2019) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board evaluate the risk of discrimination that may result from the [c]ompany's policies and practices for hourly workers taking absences from work for personal or family illness as relating to the company's "management of its workforce"); *Exelon Corp.* (February 21, 2007) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting regulations be implemented forbidding company executives from establishing incentive bonuses requiring reduction of employees' retiree benefits because "the thrust and focus of the proposal [was] on the ordinary business matter of general employee benefits"); *ConocoPhillips* (February 2, 2005) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company eliminate pension plan offsets from predecessor company pension plans as relating to "ordinary business operations (i.e. employee benefits)"); and *International Business Machines Corp.* (January 13, 2005) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a "report examining the competitive impact of rising health insurance costs" including "steps or policy options the [b]oard has adopted, or is currently considering, to reduce these costs" as "ordinary business operations (i.e., employee benefits)").

In accordance with SLB 14E, in analyzing the Proposal under Rule 14a-8(i)(7), it is necessary to examine whether "the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company." As in the above-cited precedent, the Proposal is directly concerned with certain employee benefits available to the Company's workforce and their associated risks. The Proposal asks for a report that would require the Board to report on and consider the Company's benefit-related actions, programs, policies, and risks related to employee health benefits. The Company's programs and policies relating to employees' health benefits are ordinary business matters as they concern Company management's determinations with respect to the comprehensive benefits available to its employees under its general compensation package. In this regard, the Proposal touches on the Company's relationship with its entire workforce. Moreover, these decisions are multifaceted, complex, and based on a range of considerations that are integral to managing the Company's day-to-day operations. Such determinations should not be subject to shareholder oversight because shareholders are not in a position to determine the appropriateness of employees' benefits in the context of the local, regional, national, and international labor markets; the circumstances of the Company's business; the roles that various Company employees perform; and employees' overall compensation packages, which include a multitude of different types of benefits. Since the Company's decisions regarding its employee benefits relate to the Company's general workforce

compensation decisions, the Proposal addresses the day-to-day operation of the Company's business and is excludable under Rule 14a-8(i)(7).

The Proposal does not focus on a significant social policy issue that transcends the Company's ordinary business operations.

As in the above-cited precedent, the Proposal squarely addresses ordinary business matters, specifically the benefits provided by the Company to its employees, and does not focus on a significant social policy issue that transcends such ordinary business operations, as set out in the 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). While "proposals…focusing on sufficiently significant social policy issues…generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if the significant social policy issues do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. Staff no-action responses have followed this approach over the years, establishing clear precedent that proposals that refer to topics that might raise significant social policy issues, but which do not focus on or have only tangential implications for such issues, are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business. Such proposals remain excludable under Rule 14a-8(i)(7).

For example, in *Amazon.com, Inc.* (April 8, 2022), the Staff concurred in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the company's workforce turnover rates and the effects of labor market changes resulting from the COVID-19 pandemic noting that the [p]roposal…does not focus on significant social policy issues." *See also Amazon.com, Inc.* (April 8, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting an annual report on the distribution of stock-based incentives throughout the workforce, despite the proposal referring to wealth inequality in the United States as a significant social policy issue, as ordinary business); *Intel Corporation* (March 18, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report "on whether, and/or to what extent, the public display of the pride flag has impacted…employees' [sic] view of the company as a desirable place to work," stating it "relates to, and does not transcend, ordinary business matters"); *Walmart Inc.* (April 8, 2019) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting a report evaluating the risk of discrimination from the company's policies for hourly workers taking absences from work for personal or family illness because it related "generally to the [c]ompany's management of its workforce, and does not focus on an issue that transcends ordinary business matters"); *McDonald's Corp.* (March 22, 2019) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal, although it touched on concerns about animal cruelty, because the proposal "focuses primarily on" the company's ordinary business operations); *AT&T Inc.*

(December 28, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal seeking establishment of a program to educate company employees on health matters relating to HIV/AIDS as relating to ordinary business operations); *Papa John's International, Inc.* (February 13, 2015) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal encouraging the company to add vegan options to its menu "in order to advance animal welfare, reduce its ecological footprint, expand its healthier options and meet growing demand for plant-based foods" because the proposal related to the company's ordinary business operations and "does not focus on a significant policy issue"); *CIGNA Corporation* (February 23, 2011) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal which, although it addressed access to affordable health care, asked the company to report on expense management, which the Staff noted "relates to the manner in which the company manages its expenses" and was thus an ordinary business matter); and *Apache Corporation* (March 5, 2008) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that management "implement equal employment opportunity policies based on the principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity," in which the Staff noted that some of the proposed principles related to ordinary business matters).

As in the proposals noted above, the Proposal here does not focus on a significant social policy issue, but instead focuses on the Proponent's concerns about a select few of the many benefits the Company makes available to employees. The Proposal seeks to suggest that particular benefits currently offered under the Company's health plan implicate a significant social policy issue that should be considered by the Company's stockholders in referencing "risks related to recruiting and retaining diverse talent," asserting that "[c]ompensation and benefits inequities persist across employee gender categories, and pose substantial risk to companies and society at large" and quoting discrimination policies from the U.S. Equal Employment Opportunity Commission. Notwithstanding these statements, the Proposal's focus is on the content of the Company's health care benefits offered to employees. Therefore, these assertions do not transform this otherwise ordinary business proposal into one that transcends ordinary business.

For the reasons set out above, and in accordance with the above-cited no-action letters, the Proposal may be excluded in reliance on Rule 14a-8(i)(7) because the Proposal relates to the ordinary business operations of the Company and does not focus on a significant social policy issue that transcends the Company's ordinary business operations.

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it seeks to micromanage the Company.

The Proposal may also be excluded in reliance on Rule 14a-8(i)(7) on the basis that it seeks to micromanage the Company with regard to publicizing and reporting on health benefits. In SLB 14L, the Staff clarified that in evaluating companies' micromanagement arguments, it will "focus on the level of granularity sought in the proposal and whether and to what extent it

inappropriately limits discretion of the board or management." The Staff further noted that this approach is "consistent with the Commission's views on the ordinary business exclusion, which is designed to preserve management's discretion on ordinary business matters but not prevent shareholders from providing *high-level direction on large strategic corporate matters*" (emphasis added).

Here, the Proposal would require the Company to collect and report on granular information about differences in compensation and health benefits across gender classifications, and analyze how these might affect reputational, competitive, operational, litigative and retention risks. The determination regarding compensation and health benefits – applicable to over 225,000 employees across the Company's extensive and international organization – is a complex and fundamental responsibility of the Company's management. The Company's decisions concerning these benefits are multi-faceted and based on a range of factors given the diversity of benefit requirements and oversight from a jurisdictional standpoint, and further require a deep understanding of the Company's business and operations, such as employment and labor relations, human resources, diversity and recruitment. Moreover, although the Proposal is framed as a request for a report, it could be viewed as a request of the Company to rationalize or change employee compensation and benefits, specifically targeting the Company's policies that provide coverage for gender transitioning care.

Since publication of SLB 14L, the Staff has concurred that proposals that probe too deeply into matters of a complex nature by seeking disclosure of intricate details around internal company policies and practices micromanage the company and therefore may be excluded in reliance on Rule 14a-8(i)(7). *See, e.g., Verizon Communications Inc.* (March 17, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish annually the written and oral content of diversity, inclusion, equity or related employee-training materials offered to the company's employees on the basis that the proposal "micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany's employment and training practices"); *American Express Company* (March 11, 2022) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish annually the written and oral content of employee-training materials offered to the company's employees on the basis that the proposal "micromanages the [c]ompany by probing too deeply into matters of a complex nature by seeking disclosure of intricate details regarding the [c]ompany's employment and training practices"); and *Deere & Co.* (January 3, 2022) (same). Similar to the intricate training materials requested in the proposals at issue in the foregoing no-action letters, the requested report would probe too deeply into matters of a complex nature by seeking disclosure of particularly intricate details about the Company's benefits policies and decision-making practices, including a nuanced analysis of a subset of care afforded under the Company's benefit plans. Moreover, this disclosure is not within the "large strategic corporate matters" the Staff has stated shareholders

should be able to provide "high-level direction on"[16]; rather, it is an attempt to micromanage (i) how the Company determines employee benefits, (ii) what employee benefits are offered and (iii) to whom the benefits are provided, all through the request of a report on "gaps" in coverage.

For the reasons set out above, and in accordance with the above-cited no-action letters, the Proposal may be excluded in reliance on Rule 14-8(i)(7) because the Proposal seeks to micromanage the Company with regard to its compensation and health benefits and disclosures of the same.

Conclusion

For the foregoing reasons, and consistent with the Staff's prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company's ordinary business operations.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at lillian.brown@wilmerhale.com or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

Lillian Brown

Enclosures

cc: Jolene Negre, Associate General Counsel and Secretary
The Walt Disney Company

Paul Chesser, Director, Corporate Integrity Project
National Legal and Policy Center

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[16] *See* SLB 14L.

EXHIBIT A

NATIONAL LEGAL AND POLICY CENTER

October 11, 2023

Ms. Jolene Negre
Associate General Counsel and Secretary
The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521

VIA UPS & EMAIL: [redacted]

Dear Ms. Negre/Secretary:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in The Walt Disney Company's ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

National Legal and Policy Center ("NLPC") is the beneficial owner of 60.119 shares of the Company's common stock with a value exceeding $2,000, which shares have been held continuously for more than three years prior to this date of submission. NLPC intends to hold the shares through the date of the Company's next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to produce a report on Gender-Based Compensation Gaps and Associated Risks. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I and/or an NLPC representative are able to meet with the Company via teleconference to discuss the proposal any business day Monday through Friday between October 23 and November 10, between the hours of 8:00 a.m. and 1:30 p.m in the Pacific Time Zone (U.S.). I can be reached at [redacted] or at [redacted]

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a "no-action" letter should be forwarded to me at 2217 Matthews Township Parkway, Suite D-229, Matthews, NC 28105.

Sincerely,

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Gender-Based Compensation Gaps and Associated Risks" proposal

Gender-Based Compensation Gaps and Associated Risks

WHEREAS: Compensation and benefits inequities persist across employee gender categories, and pose substantial risk to companies and society at large.

The United States Department of Labor states that "equal pay" is required if persons of different genders "perform equal work in the same workplace," and that "all forms of compensation are covered, meaning not only pay, but also benefits."[1] The U.S. Equal Employment Opportunity Commission adds:[2]

> *It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs.*

SUPPORTING STATEMENT: The Walt Disney Company ("Company") provides health benefits to employees who suffer gender dysphoria/confusion, and who seek medical, chemical, and/or surgical treatments to aid their "transition" to their non-biological sex.[3] The Company boasts about its 100 percent score on the Human Rights Campaign's Corporate Equality Index and HRC's designation as a "Best Places to Work for LGBT Equality," noting the Company complies with CEI's "equitable benefits for LGBTQ+ workers and their families" requirement.[4]

Company policy *affirms* it is possible for dysphoria sufferers to transition to a different sex. Yet an increasing body of scientific evidence shows no benefits result from such medical treatments.[5] In the United States and Europe, the medical community is increasingly cautious about transitioning therapies.[6] [7]

Victims report transition treatments and surgeries are harmful. Examples include long-lasting or permanent outcomes like chronic pain, sexual dysfunction, unwanted hair loss or hair gain, menstrual irregularities, urinary problems, and other complications.[8] Rather than resolve health problems, "gender affirming" therapies instead often exacerbate them.[9] In such instances, those who desire to "detransition" cannot find medical care or insurance coverage, and are

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[1] https://www.employer.gov/EmploymentIssues/pay-and-benefits/Equal-pay/.
[2] https://www.eeoc.gov/prohibited-employment-policiespractices.
[3] https://nb.fidelity.com/public/consultingportal/disneyportal/file_view.php?file_name=2020_BenefitsSummaryChart_Other.pdf.
[4] https://thewaltdisneycompany.com/disney-earns-top-score-in-hrc-foundation-corporate-equality-index/.
[5] https://www.foxnews.com/politics/crenshaw-grills-dem-witness-failure-name-one-study-citing-benefits-surgeries-trans-kids.
[6] https://www.wsj.com/articles/second-thoughts-on-gender-affirming-care-american-academy-pediatrics-doctors-review-medicine-a7173276
[7] https://www.wsj.com/articles/u-s-becomes-transgender-care-outlier-as-more-in-europe-urge-caution-6c70b5e0.
[8] https://www.dailymail.co.uk/health/article-11629421/Half-trans-surgery-patients-suffer-extreme-pain-sexual-issues-years-later.html.
[9] https://www.dailymail.co.uk/femail/article-12250695/I-trans-surgery-woman-19-four-years-later-Im-man.html

permanently mutilated.[10] Many of these sufferers litigate against those who misled or harmed them.[11] [12]

HRC contemplates no accommodations for detransitioners or restorative health care for such individuals – instead, it denies there is need for such care.[13] Hence, the CEI-perfect Company appears to offer no such insurance coverage in its employee benefits – only for so-called "gender-affirming care," which includes a medical travel benefit.[14] Detransitioners are protected under "gender identity" and "sexual orientation" EEOC categories and therefore cannot be discriminated against.

RESOLVED: Shareholders request the board of directors issue a report by Dec. 31, 2024 about compensation and health benefit *gaps*, which should include how they address dysphoria and de-transitioning care across gender classifications, including associated reputational, competitive, operational and litigative risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary and private information, litigation strategy and legal compliance information.

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[10] https://thefederalist.com/2023/02/10/detransitioners-are-being-abandoned-by-medical-professionals-who-devastated-their-bodies-and-minds/

[11] https://public.substack.com/p/why-this-detransitioner-is-suing.

[12] https://www.dailymail.co.uk/news/article-12310887/Young-North-Carolina-woman-sues-doctors-testosterone-age-17-saying-needed-therapy-not-double-mastectomy-latest-blockbuster-detransition-lawsuit.html

[13] https://www.hrc.org/resources/myths-and-facts-battling-disinformation-about-transgender-rights

[14] https://nb.fidelity.com/public/consultingportal/disneyportal/articles/109/disney-medical-travel-benefit

NATIONAL LEGAL AND POLICY CENTER

October 23, 2023

Ms. Jolene Negre
Associate General Counsel and Secretary
The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521

VIA UPS & EMAIL: [redacted]

Dear Ms. Negre/Secretary:

As promised, attached is our proof of ownership letter from Fidelity Investments in support of our Oct. 11, 2023 submission of our "Gender-Based Compensation Gaps and Associated Risks" proposal.

I can be reached at [redacted] or at [redacted] if you have any questions. Further correspondence can also be sent to me at 2217 Matthews Township Parkway, Suite D-229, Matthews, NC 28105.

Sincerely,

Paul Chesser

Paul Chesser
Director
Corporate Integrity Project

Enclosure: Fidelity Investments shareholder verification letter

Fidelity Brokerage Services LLC
100 Crosby Parkway, Covington, KY 41015

October 17, 2023

Corporate Secretary
Walt Disney Company
Shareholder Proposal October 11, 2023
Re: Shareholder Resolution of National Legal and Policy Center

To Whom It May Concern:

This letter is in response to a request from Mr. Peter T. Flaherty, Chairman of the National Legal and Policy Center.

As of October 11, 2023, the National Legal and Policy Center held and has held continuously for at least three years 60.119 shares of Walt Disney Company (DIS) common stock.

Per Mr. Peter T. Flaherty, the National Legal and Policy Center is a proponent of a shareholder proposal submitted to the company in accordance with rule 14(a)-8 of the Securities and Exchange Act of 1934. Our clearing firm, National Financial Services LLC is a wholly owned subsidiary of Fidelity Investments. Our DTC number is 0226.

I hope this information is helpful. For any other issues or general inquiries, please contact a Fidelity representative at 800-544-6666. Thank you for choosing Fidelity Investments.

Sincerely,

Lynn Wickemeyer
Fidelity Investments

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